

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of Verizon Communications Inc. ("Verizon") and MCI, Inc. ("MCI") to Transfer Control of MCI's California Utility Subsidiaries to Verizon, Which Will Occur Indirectly as a Result of Verizon's Acquisition of MCI.

Application 05-04-020  
(Filed April 21, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING ADDRESSING  
APPLICANTS' MOTION TO COMPEL RESPONSES  
BY COX CALIFORNIA TELCOM, LLC**

**1. Summary**

This ruling grants in part and denies in part the motion filed on July 28, 2005, by Verizon Communications Inc. (Verizon) and MCI, Inc. (MCI) (collectively, Applicants) to compel more complete responses to two data requests to which Cox California Telcom, LLC (Cox) has limited its responses. The data requests seek documents concerning Cox's business plans relating to the provision of telecommunications services in California both before and after the proposed merger was announced.

**2. Factual Background**

Applicants served their First Set of Data Requests on Cox on June 2, 2005. Two of these requests are at issue in this motion:

**Data Request 1:**

Please provide all documents that describe, discuss, address or refer to your plans, projections or strategies concerning the provision in California of the following services: local exchange service; intraLATA toll; interLATA toll; Voice over IP ("VoIP"); Internet

access service; broadband access service; local and intrastate data transport services; and packaged service comprising one or more of the foregoing. Please include, without limiting the foregoing, documents address or referring to any particular customer groups (e.g., enterprise, small business, consumer) or geographic area(s) within California to which such services would be marketed.

**Data Request 6:**

Please provide all documents that refer to, describe, discuss or address your business plans or strategies relating to provision of any real time communication service in California by using, in whole or in part, any facility not owned by Verizon or MCI.

Cox on June 13, 2005, objected to Applicants' First Set of Data Requests on grounds, among other things, that the requests were "improper, overbroad, and unduly burdensome," and "not relevant or material to the subject matter of this proceeding." (Motion, Exhibit B.) In a June 17, 2005 letter, Applicants argued that because the gravamen of Cox's protest was that the proposed merger would adversely affect competition in telecommunications services in California, and because the data requests seek documents related to that issue, Cox's objections lacked merit. (Motion, Exhibit C.)

The parties then met and conferred and reached agreement on some of the requests to which Cox originally had refused to provide a response. Applicants offered to narrow the scope of the requests by reducing the time frame for documents to July 1, 2004 or later, by narrowing production to documents to "speaking documents" (those that specifically mention the subjects of the requests), and by limiting the documents to meaningful, management-level documents. Cox agreed to respond to data requests 1 and 6, but it indicated that its response would be limited to documents that are "focused or limited to or relating to the effects of the merger." Cox based its position on a ruling of the

Administrative Law Judge (ALJ) in the SBC/AT&T proceeding,  
Application 05-02-027.<sup>1</sup>

### **3. Position of Applicants**

Applicants assert that the data requests are relevant to the competition issues in this proceeding and, as narrowed, cannot be said to be unduly burdensome. They argue that Cox has explicitly stated that the proposed transaction will have a negative impact on competition in California. For instance, Cox in its protest stated that “[u]nless the Commission takes decisive action now,” the proposed SBC/AT&T and Verizon/MCI combinations “will control and manipulate the telecom framework to the detriment of competition and consumers.” (Cox Protest, at 2.) Cox also challenges Applicants’ argument that “California consumers will be able to choose from a large pool of competitive providers in a post-merger world.” (Cox Protest, at 3.) Cox also alleges that “[c]ombining these two companies necessarily and tangibly eliminates opportunities for competition in California.” (Cox Protest, at 5.) Applicants argue that data requests 1 and 6 seek documents relevant to these allegations.

### **4. Analysis of Cox’s Arguments**

Cox responded to the motion on August 2, 2005. It asserts that it should be required to supply only business plan documents that reflect changes to plans as a result of the Verizon/MCI merger or plans developed in reference to the

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<sup>1</sup> ALJ Ruling Regarding Applicants’ Motion to Compel Responses from Qwest, July 5, 2005.

merger. It states that this position is supported by ALJ Pulsifer's Ruling on July 5, 2005, in the SBC/AT&T proceeding.

ALJ Pulsifer considered 10 data requests directed to Qwest Communications Corporation (Qwest) in the July 5 ruling. He directed Qwest to supply business documents responsive to the data requests. He added, however:

On the other hand, while Qwest interprets the data requests too narrowly by refusing to provide any documents at all, the Applicants frame their Data Request 1-2, 1-4, and 1-5 too broadly by simply asking for "strategic business documents" or "all business planning documents" without attempting to define the scope in a more focused manner, or specifically relating the business plans to the effects of the planned merger. Moreover, these requests appear somewhat duplicative and/or overlapping with Data Request 1-14 which asks for all planning documents, etc. that are a result of the SBC/AT&T merger. Thus, Qwest should not be required to respond to such duplicative questions. Applicants should narrow and eliminate these overlapping or duplicative questions. (ALJ Ruling Regarding Applicants' Motion to Compel Responses From Qwest, July 5, 2005, at 7-8.)

ALJ Pulsifer's ruling is distinguishable from the ruling that Applicants seek here. First, at the time of that ruling, SBC and Qwest had not met and conferred with respect to the requests at issue, which sought "all business planning documents" without attempting to limit the scope of the documents. Judge Pulsifer therefore deemed the requests overbroad and ordered the parties to engage in meet-and-confer sessions to narrow the requests. By contrast here, the parties have met and conferred, and Applicants have narrowed the document requests to "speaking documents" prepared since July 1, 2004 and limited to meaningful, management-level documents (presumably, vice president level and above). Cox states that it also was agreed to limit the scope of discovery to Verizon's service territory in California.

Second, Judge Pulsifer found two of SBC's requests duplicative of other requests. There is no such claim in this case, but to the extent data request 6 is somewhat duplicative of data request 1, this ruling directs (and Applicants have agreed) that data request 6 need not be answered if Cox provides a full response to data request 1. Finally, Judge Pulsifer's ruling expressly states that Qwest has an "independent obligation to respond to Applicants' requests seeking the basis of Qwest's claims that competition will be adversely affected by the merger." (Ruling, at 8.) This ruling reaches the same conclusion as to Cox and its claims of competitive impact.

## **5. Discussion**

The documents sought by Applicants here are relevant to the issues of whether the Verizon/MCI merger will have a significant competitive impact in the markets for telecommunications and internet services, as Cox alleges. (Cox Protest, at 14-16.) To the extent that this ruling eliminates one of the requests and significantly narrows the required production as to data request 1 (pursuant to the parties' meet-and-confer agreements), the discovery request cannot be said to be overbroad or unduly burdensome. To the extent that Cox is concerned about the confidentiality of its marketing documents, the data can be made subject to nondisclosure agreements similar to those that apply to Cox's receipt of Verizon and MCI documents. (*See* ALJ Judge's Ruling Granting, in Part, Motion for Protective Order, dated July 15, 2005.)

Applicants seek documents concerning Cox's plans, projections or strategies for providing telecommunications services in California. The Commission has held that the number and strength of competitors remaining in the market after a merger is relevant in determining whether the merger would adversely affect competition. Thus, in the Enova/Pacific Enterprises merger

case, the Commission upheld an ALJ ruling requiring Southern California Edison Company to produce documents relating to its “current plans in the area of competition,” and ordering sanctions for refusing to provide such documents. (*Re Pacific Enterprises* (1998) 70 CPUC2d 343.) The ALJ had found that such documents were relevant to analyzing the “competitive environment that will exist subsequent to the consummation of the proposed merger.” The Commission also noted that “[w]hat matters in assessing a merger is how the merger will change the competitive circumstances that would obtain absent the merger.” (70 CPUC2d at 378.)

Similarly, in the Telesis/SBC merger case, the Commission noted the importance of considering the future plans of potential competitors in the California markets for local exchange or intrastate services. (*Re Pacific Telesis Group* (1997) 71 CPUC2d 351.) Likewise, in the GTE/Bell Atlantic merger case, the Commission relied on the presence of other actual and potential competitors, and their relative strengths and weaknesses, in finding that the proposed merger would not adversely affect competition. (*Re GTE Corporation and Bell Atlantic Corporation* (2000) D.00-03-021, at 106.) In *Re AT&T* (1994) Decision 94-04-042, the Commission held that “[i]ncreasing competition in the market for interexchange services and the emergence of several alternative to cellular service will subject [the combined AT&T and McCaw Cellular] to competitive pressures that will prevent them from exerting market power in the relevant markets.”

Moreover, in the context of this data request and the protest of this particular intervenor, this ruling finds that relevant documents as defined in the narrowed request should be produced without regard to whether they reference the Verizon/MCI merger. The Commission in the Pacific/Enova case ordered Edison to produce its “current plans in the area of competition.” (79 CPUC2d at

415.) In the SBC/Telesis case, the Commission ordered AT&T to produce its “pre- and post-merger business and marketing plans.” (79 CPUC2d at 418.)

The relevance of competitive business plans to a merger proceeding is, among other things, that such plans allow the Commission to evaluate the competitive landscape that a combined Verizon/MCI would face and to assess whether, within that landscape, the new company would be able to exercise any market power. Pre-transaction business plans, like those ordered to be produced in the SBC/Telesis case, are relevant because they provide a baseline to which post-transaction plans could be compared, in order to determine whether any meaningful change had occurred. In other words, a showing that Cox business plans changed markedly following announcement of the Verizon/MCI merger arguably could support Cox’s argument that the proposed merger adversely affects competition. On the other hand, a showing that Cox business plans showed little change before and after the Verizon/MCI merger arguably could support an inference that the merger has not had a substantial effect on Cox’s competition.

In summary, Cox in the context of this case and these data requests has not provided a convincing rationale as to why it should not be required to produce responsive documents to the modified data request 1 to the extent that it possesses responsive documents. Accordingly, Cox is directed to provide responses to modified data request 1 as specified below.

**IT IS RULED** that:

1. The Applicants’ Joint Motion to Compel Responses by Cox California Telcom, LLC (Cox) to Applicants’ First Set of Data Requests is granted in part and denied in part.

2. Parties shall promptly meet and confer as necessary to resolve specific details concerning materials to be produced and the degree of confidentiality, if any, to be accorded such documents.

3. Cox shall produce relevant documents that are responsive to Applicants' data request 1 of Applicants' First Set of Data Requests, as modified by agreement of the parties as discussed above.

4. Cox need not produce documents responsive to data request 6 provided that it has provided a full response to data request 1.

5. Cox's production of documents in response to Applicants' data request 1 shall be made within three business days of the date of this order, unless otherwise mutually agreed by the parties.

Dated August 5, 2005, at San Francisco, California.

/s/ GLEN WALKER  
Glen Walker  
Administrative Law Judge



**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties for whom an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Addressing Applicants' Motion to Compel Responses by Cox California Telcom, LLC on all parties of record in this proceeding or their attorneys of record.

Dated August 5, 2005, at San Francisco, California.

/s/ ERLINDA PULMANO

Erlinda Pulmano

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.